

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Service Rules Advanced Wireless Services H) WT Docket No. 12-357
Block – Implementing Section 6401 of the)
Middle Class Tax Relief and Job Creation)
Act of 2012 Related to the 1915-1920 MHz)
and 1995-2000 MHz Bands)

Petition for Reconsideration Of The Rural)
Wireless Association, Inc.)
f/k/a Rural Telecommunications Group, Inc.)

**COMMENTS IN SUPPORT OF THE PETITION FOR RECONSIDERATION OF THE
RURAL WIRELESS ASSOCIATION, INC.**

NTELOS Holdings Corp. (“nTelos”),¹ by its attorneys, hereby respectfully submits its comments in support of certain aspects of the *Petition For Reconsideration* filed by the Rural Wireless Association, Inc., (f/k/a Rural Telecommunications Group, Inc.) (“RWA”) in the above-captioned proceeding (“RWA Petition”).² Specifically, nTelos supports adopting Cellular Market Area (“CMA”) licenses, instead of Economic Area (“EA”) licenses, for the upcoming H Block Auction, scheduled to take place on January 22, 2014 (“Auction 96” or the “H Block Auction”).³ In support, the following the respectfully shown:

¹ For the purposes of these Comments, the term “nTelos” refers to NTELOS Holdings Corp. and all of its FCC-licensed subsidiaries.

² See *Petition For Reconsideration Of The Rural Wireless Association*, in WT Docket No. 12-357 (filed Sept. 16, 2013) (“*RWA Petition*”).

³ See *RWA Petition*, 5-12; see also *Auction for H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Rescheduled For January 22, 2014*, Public Notice, AU Docket No. 13-178, DA 13-2033 (rel. Oct. 21, 2013).

I. INTRODUCTION

nTelos is a regional provider of high-speed voice and data services for businesses and approximately 455,000 retail subscribers in select areas of Virginia, West Virginia, Maryland, Ohio, Kentucky, North Carolina and Pennsylvania. nTelos' licensed territories have a total population of approximately 7.9 million residents. In these areas, nTelos actively competes against the nationwide wireless carriers by constantly improving its service offerings for its customers. Currently, nTelos is developing its 4G LTE network and has been actively seeking to acquire additional spectrum for the past years in order to effectively deploy this network, along with other robust services for its customers. Acquisition of additional spectrum has proven difficult for nTelos since the last major spectrum auction occurred in 2008 and its efforts in the secondary market have been largely unsuccessful.

nTelos appreciates the Commission's recognition of the spectrum shortage and its efforts to make more spectrum available for mobile use in the H Block Auction. However, nTelos is concerned about the Commission's decision to issue licenses for the 1915-1920 MHz and 1995-2000 MHz band ("H Block") on an EA basis.⁴ nTelos agrees with RWA that this action may hinder small, rural and regional carriers from meaningfully participating in the H Block Auction, and be inconsistent both with the public interest and the Commission's statutory obligations under Section 309(j) of the Communications Act of 1934, as amended (the "Communications Act" or the "Act").⁵ Indeed, many carriers may be forced to sit out this Auction due substantially in part to the Commission's decision to allocate the H Block in EA geographic areas. Due to this decision, nTelos is currently evaluating whether to participate in Auction 96.

⁴ *Service Rules for Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Report and Order, 28 FCC Rcd 9483 (rel. June 27, 2013) ("*H Block Report and Order*").

⁵ 47 U.S.C. § 309(j).

Therefore, nTelos urges the Commission to adopt RWA's suggestion and issue licenses for the H Block on a CMA basis.⁶ The CMA license size is more manageable to smaller carriers and preserves their ability to obtain local and regional licenses suited to their business plans, and also allows the larger carriers to aggregate their licenses into larger market areas. By issuing smaller H Block licenses, both regional and nationwide carriers alike would have the opportunity to participate in Auction 96.

II. LICENSING SPECTRUM ON A CMA BASIS, RATHER THAN AN EA BASIS, WILL ALLOW REGIONAL CARRIERS TO MEANINGFULLY PARTICIPATE IN THE H BLOCK AUCTION AND ACQUIRE BADLY-NEEDED SPECTRUM

a. The H Block Auction Is The First Auction In Five Years To Offer Wireless Spectrum

The Commission has long recognized that “spectrum is the lifeblood of the wireless [industry]”⁷ and in order to ensure that this industry continues to thrive, the Commission must make additional spectrum available for wireless broadband. But in doing so, the Commission must also ensure that any new spectrum is made available to wireless carriers on an equal playing field so that a variety of carriers serving all types of consumers may have access to spectrum. Indeed, the wireless industry finds itself in increasing need of wireless spectrum. As the wireless industry continues to innovate and new technologies are deployed, more and more spectrum is needed by wireless carriers to satisfy the data demands of their customers and ensure that consumers have the ability to take full advantage of these technologies. Without access to additional spectrum, carriers, especially regional carriers, will be forced to consolidate and merge in order to increase their aggregate spectrum holdings, which, in turn, will eliminate choices for consumers.

⁶ See *RWA Petition* 4-12.

⁷ Prepared Remarks of Chairman Julius Genachowski, “Innovation in a Broadband World,” The Innovation Economy Conference, Dec. 1, 2009.

The last major spectrum auction offered licenses of the 700 MHz block in 2008 (“Auction 73”). This auction was dominated by AT&T and Verizon, who contributed a combined \$16 billion out of the total \$19.6 revenue that the auction generated.⁸ This dominance was due in large part to the Commission’s decision to issue licenses in large geographic blocks. This decision hindered the ability of small, rural and regional carriers to meaningfully participate in Auction 73 and acquire the spectrum they desperately needed. As a consequence, many of these smaller carriers left that auction empty-handed and were then forced to look to other means of obtaining spectrum. However, despite the best efforts of many of these providers, including nTelos, the secondary market has generally resulted in greater spectrum holdings for the larger, nationwide carriers, and has resulted in fewer opportunities for, and sometimes even the exit of, smaller, regional carriers.⁹ These smaller carriers must be provided a fair opportunity to compete in the wireless market and any policies adopted by the Commission in this proceeding should enable these carriers to do so.

The Commission has a prime opportunity to promote pro-competitive policies with the H Block Auction. Since 2004, the Commission has been considering how to put this spectrum to its highest and best use,¹⁰ and the passage of time has only heightened the critical need of

⁸ Bryan Gardiner, *In Spectrum Auction, Winners Are AT&T, Verizon and Openness*, WIRED.COM, Mar. 20, 2008, <http://www.wired.com/business/2008/03/fcc-releases-70/>.

⁹ Most recently, AT&T has sought to acquire Leap Wireless. If the transaction is approved as proposed, AT&T will increase its already substantial spectrum holdings and Leap will no longer serve its role as a competitive option for consumers, and will be eliminated from the market. *See In the Matter of AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC and Leap Licenseco, Inc. Seek Consent to the Transfer of Control of AWS-1 Licenses, PCS Licenses, and Common Carrier Fixed Point To Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License*, DA 13-1831, Public Notice, WT Docket No. 13-193 (rel. Aug. 28, 2013).

¹⁰ *Service Rules for Advanced Wireless Services in the 1915 – 1920 MHz, 2020 – 2025 MHz and 2175 – 2180 MHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263 (2004).

wireless service providers for additional spectrum.¹¹ Auction 96 represents the first auction opportunity for wireless spectrum since Auction 73 five years ago. Indeed, Auction 96 is the first of several efforts the Commission is taking to make more spectrum available for wireless broadband use, and based on its success, will likely set a precedent for future auctions.

Therefore, the Commission must ensure that the H Block Auction offers spectrum on an equal playing field to all carriers – large and small, nationwide and regional. One way to accomplish this objective, and allow both national and regional carriers the opportunity to bid on spectrum, is to issue licenses based on smaller geographic areas, such as CMAs, rather than the larger-license areas of EAs.

b. H Block Licenses Based On CMAs Are In The Public Interest

RWA correctly emphasizes that the Commission’s rationale behind its decision to issue licenses based on EAs fails to recognize an important objective of Section 309(j) – the Commission should include safeguards to protect and promote “the development and rapid deployment of new technologies, products, and services for the benefit of the public, *including those residing in rural areas.*”¹² nTelos reiterates that the Communications Act clearly recognizes the importance of promoting deployment to rural areas and the Commission must adopt rules and regulations to further this objective. In order to accomplish this goal in the H Block Auction, the Commission should issue licenses based on CMAs. CMA-sized licenses will promote the deployment of wireless services to consumers in rural areas by increasing the opportunities for small, rural, or regional carriers to effectively participate in the Auction and acquire the spectrum they desperately need. The public interest will be served by maximum

¹¹ Indeed, since this spectrum was first identified, the Commission has allocated and licensed the AWS-1 spectrum, 700 MHz spectrum and granted flexible use for mobile satellite spectrum.

¹² 47 U.S.C. § 309(j)(3)(A) (emphasis added); *RWA Petition*, 5.

participation in the Auction since it will likely result in maximum revenues and the wide-distribution of spectrum resources to carriers across the country. This is because CMAs are more manageable geographic areas and therefore will allow both smaller and larger carriers an opportunity to meaningfully participate and acquire spectrum. Offering licenses on smaller geographic areas creates strong incentives for small, rural and regional carriers to participate in the Auction because they do not need to spend exorbitant amounts of money and resources in order to acquire spectrum that they do not need or want. Indeed, smaller carriers can focus on the areas where they are most spectrum constrained, without having to build out larger areas they currently do not serve. CMAs will also work to the benefit of the larger carriers because they will also allow these larger carriers to aggregate blocks and serve the larger geographic areas that they would be serving under EAs, and seek to serve nationwide. As a result, the CMA-based licensing scheme will ensure that all carriers that wish to participate in Auction 96 are provided a fair chance to do so – and a fair chance to succeed.

On the contrary, licensing blocks by EAs will achieve the exact opposite. As RWA recognized, EAs “generally contain metropolitan or similar areas” and “are often unaffordable to small and rural carriers.”¹³ EA-sized blocks are simply too large – and too expensive – for many small, rural and regional carriers, and will likely foreclose these carriers from participating in the H Block Auction, resulting in large, nationwide carriers acquiring the majority of the spectrum, just like Auction 73.¹⁴ If implemented, EAs would require competitive carriers to bid on areas that are much larger than their intended service area and will be at a higher cost and require

¹³ *RWA Petition*, 7.

¹⁴ In the event that the Commission chooses EA-based licenses for Auction 96, nTelos is one of the smaller, rural and regional carriers that will be forced to conduct a serious cost and benefit analysis regarding whether or not to participate in an auction that would very likely result in expending significant funds and resources during the process, with no reward.

significantly more resources. For instance, in the AWS-3 proceeding, Bluegrass Cellular, Inc. recognized that if the “Commission use[d] EAs for AWS-3 licenses, Bluegrass would be forced to bid . . . on spectrum that covers a population of approximately six million when its core markets cover a much smaller footprint (somewhere closer to a population of 1.2 million).”¹⁵ In this example, Bluegrass would be required to bid on – and build out – EAs covering **five times** the size of the population it currently serves, and costing more than it can afford.¹⁶ Bluegrass recognizes that this problem “is a universal economic barrier to entry for all existing small carriers and any new entrants that would be interested in serving small local communities or rural areas.”¹⁷

While Bluegrass’ comments were submitted in response to the AWS-3 Auction procedures, the underlying result will be the same for the H Block Auction. The likely outcome is that many spectrum-starved carriers may decide not to participate in the Auction at all – which would hinder their ability to provide competitive services to consumers and lower Auction revenues. Not only will these competitive carriers be missing out on spectrum opportunities, but the consumers in these small or rural service areas will also be punished. Without available spectrum, competitive carriers are unable to effectively compete with the nationwide carriers who hold significant amounts of wireless spectrum. This, in turn, may force many smaller carriers to exit the market, effectively reducing market competition. Such consequences of EA licensing are not in the public interest, nor do they satisfy the objective of Section 309(j) and will only continue to limit the choices that consumers are presented as the industry funnels into a duopolistic market.

¹⁵ Comments of Bluegrass Cellular, Inc. in GN Docket No. 13-185, 3 (filed Sept. 18, 2013).

¹⁶ *Id.*

¹⁷ *Id.* at 4.

III. CONCLUSION

For the foregoing reasons, nTelos agrees with RWA that the Commission should use CMAs as the basis for licenses in Auction 96. The adoption of EAs, rather than CMAs, for Auction 96 will not permit the Commission to meet its Congressional mandate to safeguard and protect the public interest because such a decision will not promote the deployment of services to consumers in rural areas nor allow rural carriers to effectively participate in the H Block Auction. Therefore nTelos respectfully requests that the Commission reconsider its prior decision and issue licenses on a CMA basis for the H Block Auction.

Respectfully Submitted,

NTELOS Holdings Corp.

/s/ Michael Lazarus

Michael Lazarus
Jessica DeSimone
Telecommunications Law Professionals
PLLC
875 15th Street, NW
Suite 750
Washington, DC 20005

Brian J. O'Neil
NTELOS Holdings Corp.
Executive Vice President, General Counsel
and Secretary
1154 Shenandoah Village Drive
Waynesboro, VA 22980
Telephone: (540) 946-2058

November 12, 2013

Its Attorneys

CERTIFICATE OF SERVICE

I, Jessica DeSimone, hereby certify that on the 12th day of November, 2013, I caused a true and correct copy of the foregoing Comments in Support of The Petition For Reconsideration of The Rural Wireless Association, Inc. to be sent by electronic mail and First-Class Mail to:

Caressa D. Bennet
Robert A. Silverman
Bennet & Bennet, PLLC
6124 MacArthur Blvd.
Bethesda, MD 20816
cbennet@bennetlaw.com
rsilverman@bennetlaw.com

Counsel for The Rural Wireless Association, Inc.

/s/ Jessica DeSimone
Jessica DeSimone